STATE OF MICHIGAN

IN THE SUPREME COURT

COUNTY ROAD ASSOCIATION OF MICHIGAN, a Michigan nonprofit corporation, and CHIPPEWA COUNTY ROAD COMMISSION, a public body corporate,

Plaintiffs-Appellees,

and

MICHIGAN PUBLIC TRANSIT ASSOCIATION; ANN ARBOR TRANSPORTATION AUTHORITY, CAPITAL AREA TRANSPORTATION AUTHORITY, and SUBURBAN MOBILITY AUTHORITY FOR REGIONAL TRANSPORTATION,

Intervening Plaintiffs-Appellants,

v

GOVERNOR OF THE STATE OF MICHIGAN; DIRECTOR OF THE MICHIGAN DEPARTMENT OF TRANSPORTATION; MICHIGAN DEPARTMENT OF TRANSPORTATION; DIRECTOR OF THE MICHIGAN DEPARTMENT OF MANAGEMENT & BUDGET; MICHIGAN DEPARTMENT OF MANAGEMENT & BUDGET; STATE BUDGET DIRECTOR; STATE TREASURER; MICHIGAN DEPARTMENT OF TREASURY; SECRETARY OF STATE; and MICHIGAN DEPARTMENT OF STATE,

Defendants-Appellees.

Supreme Court No. 125665

Court of Appeals No. 245767

Lower Court File No. 02-308-CZ

125665

FRASER TREBILCOCK DAVIS & DUNLAP, P.C. LAWYERS LANSING, MICHIGAN 48933

SUPPLEMENTAL BRIEF IN SUPPORT OF INTERVENOR/APPELLANT'S APPLICATION FOR LEAVE TO APPEAL

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INTRODUCTION

The County Road Association of Michigan ("CRAM") submits this Supplemental Brief pursuant to the Court's Order of September 30, 2004.

CRAM concurs with Intervenors/Appellants that the Court of Appeals erred in its application of the principles of constitutional interpretation in reversing the Trial Court's decision enjoining the transfer of funds dedicated by the Constitution for comprehensive transportation by executive order. CRAM also concurs in the analysis and argument made by Intervenors/Appellants as to the correct interpretation of the third clause of the third paragraph of Const 1963, art 9 § 9.

The Court held in abeyance a second application for leave to appeal emanating from the same case before the Trial Court, County Rd Ass'n v Governor (Docket No. 125901), pending resolution of this appeal indicating that the decision in this case "may resolve an issue raised in the present application for leave to appeal."

CRAM maintains that the fundamental principles of constitutional interpretation are equally applicable in this Docket and Docket 125901.

DISCUSSION

Recently this Court has reiterated the purpose of interpreting the Constitution and analytical methodology for undertaking that task. County of Wayne v Hathcock, 471 Mich 445, 468; 684 NW2d 765 (2004). The approach to analyzing the Constitution is to first determine if the words have a plain meaning or are obvious on their face. Michigan Coalition of State Employees Unions v Civil Service Comm, 465 Mich 212, 222-223; 634 NW2d 692 (2001).

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Justice Cooley in his treatise on Constitutional Limitations, to which this Court has referred many times, has provided a succinct explanation of this principle of constitutional interpretation.

> In interpreting clauses we must presume that *words have been employed in their natural and ordinary meaning*. As Marshall, Ch. J., says: The framers of the constitution, and the people who adopted it, "must be understood to have employed the words in their natural sense, and to have intended what they have said." This is but saying that no forced or unnatural construction is to be put upon their language; and it seems so obvious a truism that one expects to see it universally accepted without question; but the attempt is made so often by interested subtlety and ingenious refinement to induce the courts to force from these instruments a meaning which their framers never held, that it frequently becomes necessary to re-declare this fundamental maxim. Cooley, Constitutional Limitations (8th Ed.), pp. 130-132.

The Court of Appeals erred in concluding that language of the third paragraph was ambiguous when it was not. The plain meaning of paragraph three of art 9 § 9 as explained in Appellants/Intervenors' Brief, pages 20-26, is that the revenue from a portion of general sales taxes on specific items become dedicated exclusively for comprehensive transportation purposes when so designated by the Legislature. There are no technical or legal terms that require special analysis.

Moreover, the Court of Appeals accepted the Defendants' argument which was nothing less than an argument of "interested subtlety and ingenious refinement" that Justice Cooley cautioned would result in interpretations of the Constitution never intended by the drafters. As Justice Cooley stated, it is necessary for the courts to re-declare the maxim that we must presume that the words of the Constitution are used according to their natural and ordinary meaning.

Re-declaring the maxims of constitutional interpretation would likewise resolve the issue raised by CRAM in its appeal in Docket 125901. In Docket 125901 the Court of Appeals

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reversed the Trial Court's decision to enjoin the transfer of approximately $12.5 million designated as "necessary collection expenses" because Defendants' allocation of costs included expenses related to collection of general fund revenues. The Court of Appeals stated without explanation that, "Nothing in the language of Const 1963 art 9, § 9 directs the exclusion of necessary collection expense if they incidentally further other governmental functions." However, that conclusion could not be drawn from the plain language of art 9, § 9.

An excellent example of how this Court applied the principles of constitutional interpretation in its interpretation of the term "necessary costs" in Const 1963 art 9, § 29 which is so similar to "necessary collection expenses" is found in Durant v Department of Education, 203 Mich App 507; 513 NW2d 195 (1994), appeal denied 445 Mich 919; 519 NW2d 898, reconsideration denied 522 NW2d 633 ("commonly referred to as Durant I"). In Durant supra, the Court applied the plain language analysis in deciding whether a statute implementing the Headlee Amendment was consistent with art 9, § 29. This Court has expressly affirmed that the words "necessary" and "costs" are to be interpreted according to common understanding. Livingston Co. v Dep't of Management and Budget, 430 Mich 635; 425 NW2d 65 (1988) and Macomb County Taxpayers Assoc. v L'anse Creuse Public Schools, 455 Mich 1; 564 NW2d 457.

The determination of the proper amount of "necessary collection expenses" is a determination for the trier of fact as this Court had held that the determination of "necessary costs" are to be determined by the trier of fact. Durant v Department of Education, 186 Mich App 83; 463 NW2d 461 (1990), remanded 441 Mich 930; 498 NW2d 736, on remand 203 Mich App 507; 513 NW2d 195, opinion after remand 213 Mich App 500; 541 NW2d 278, appeal denied 453 Mich 892; 554 NW2d 312, order vacated on reconsideration 453 Mich 952;

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557 NW2d 309, affirmed in part 454 Mich 1219; 563 NW2d 646, affirmed in part 456 Mich 175; 566 NW2d 272, on subsequent appeal 456 Mich 924; 575 NW2d 546. There is no basis for concluding that $12.5 million of a combined transfer and appropriation $96 million transfer is incidental. The only ruling that the Court of Appeals could have made consistent with the Durant cases would have been to remand the case to the Trial Court for additional proofs.

Justice Cooley recognized the need to re-declare the fundamental maxim of constitutional interpretation so as to avoid the strained interpretations that result from the failure to look to the plain meaning of the language of the Constitution. In this case the Court of Appeals' failure to apply the plain language of the third paragraph yielded a result inconsistent with the proposal presented to the voters. In the companion case the Court of Appeals' language opens the door to the type of appropriations shifts that the people of Michigan intended to prevent by constitutionally restricting the use of revenue from designated sources for funding specific programs.

RELIEF

For the reasons set forth above, CRAM respectfully requests that this Honorable Court grant the Intervenors/Appellant's Application for Leave to Appeal and reverse the decision of the Court of Appeals. Further, CRAM respectfully requests that this Honorable Court reiterate the fundamental principles of constitutional interpretation so as to avoid interpretations of the Constitution clearly not intended by the drafters.

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Respectfully submitted,

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Dated: October 28, 2004

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